

Date: December 1, 1999

Case No.: **97-CAA-15**

JAMES WHITAKER,
Complainant,

v.

CTI-ALASKA, INC. and
ALYESKA PIPELINE SERVICE CO.,
Respondents.

BEFORE: JOHN M. VITTON
Chief Administrative Law Judge

RECOMMENDED ORDER APPROVING SETTLEMENT
AND DISMISSING CASE

This case arises under the Clean Air Act (CAA), 42 U.S.C. §7622 (1988). The parties submitted a Settlement Agreement and Release ("Agreement") seeking approval of the settlement and dismissal of the complaint which was received by this office on November 15, 1999. This agreement was supplemented by a letter signed by Complainant and his counsel detailing the exact amount of money to be paid for attorney's fees as a result of this agreement.

The request for approval is based on an agreement entered into by the parties, therefore, it must be reviewed to determine whether the terms are a fair, adequate and reasonable settlement of the complaint. 29 C.F.R. §24.6. *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep't of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

Review of the agreement reveals that it may encompass the settlement of matters under laws other than the CAA. *See Agreement*, ¶6. As stated in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, slip op. at 2:

[The Secretary's] authority over settlement agreements is limited to such statutes as are within [the Secretary's] jurisdiction and is defined by the applicable statute. *See Aurich v. Consolidated Edison Company of New York, Inc.*, Case No. [86-]CAA-2, Secretary's Order Approving Settlement, issued July 29, 1987; *Chase v. Buncombe County, N.C.*, Case No. 85-SWD-4, Secretary's Order on Remand, issued November 3, 1986.

I have therefore limited review of the agreement to determining whether the terms thereof are a fair, adequate and reasonable settlement of Complainant's allegations that Respondent violated the CAA.

The Administrative Review Board requires that all parties requesting settlement approval of cases arising under the CAA provide the settlement documentation for any other alleged claims arising from the same factual circumstances forming the basis of the federal claim, or to certify that no other such settlement agreements were entered into between the parties. *Biddy v. Alyeska Pipeline Service Company*, ARB Case Nos. 96-109, 97-015, *Final Order Approving Settlement and Dismissing Complaint*, Dec. 3, 1996, slip op. at 3. Accordingly, the parties have certified that the agreement constitutes the entire and only settlement agreement with respect to the complainant's claims. *See Agreement*, ¶ 10.

Having reviewed the agreement, which is incorporated by reference, I find that it is a fair, adequate, and reasonable settlement of the complaint. Accordingly, it is recommended that the settlement agreement be approved and that the complaint be dismissed with prejudice.

JOHN M. VITTON

Chief Administrative Law Judge

JMV/jcg

NOTICE: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. *See* 29 C.F.R. §§ 24.8 and 24.9, as amended by 63 Fed. Reg. 6614 (1998).